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# AN EVALUATION OF THE DALLAS PRETRIAL RELEASE PROJECT\*

by

Robert L. Bogomolny\*\* and William Gaus\*\*\*

Feasible alternatives to the traditional money bail system<sup>1</sup> have been known now for nearly a decade.<sup>2</sup> Beginning in 1961 with the Manhattan Bail Project,<sup>3</sup> it has been demonstrated that large numbers of arrested persons can be safely released prior to trial without money bail.<sup>4</sup> The premise underlying these projects is that whether a prisoner is a good prospect for release depends not on the payment of money bail but on the prisoner's roots in the community, such as his employment, his family and friends, and his length of stay in the area.<sup>5</sup> The Manhattan Bail Project interviewed a selected portion of the New York pretrial jail population and on the basis of these interviews determined whether a defendant was a proper subject for release. Essentially, the Project applied an

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\* This Article is adapted from a report completed by the Criminal Justice Programs of Southern Methodist University School of Law and the Southern Methodist University Institute of Urban and Environmental Studies under a contract with the Dallas Pretrial Release Project.

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<sup>1</sup> The precise origin of the concept of bail, *i.e.*, a type of insurance that an accused person will return when required as well as a device to free untried persons, is unknown. E. DE HAAS, *ANTIQUITIES OF BAIL* 27-29 (1940). The device was known in early Anglo-Saxon law primarily because the lengthy waiting period between arrest and trial caused both costly problems of detention and danger to the health of the accused. See 2 F. POLLOCK & F. MAITLAND, *THE HISTORY OF ENGLISH LAW* 854 (2d ed. 1898). For a general history of the theory of bail in England and the United States, see D. FREED & P. WALD, *BAIL IN THE UNITED STATES*: 1964, at 1-8 (1964) [hereinafter cited as *BAIL IN THE UNITED STATES*]. See also J. STEPHEN, *A HISTORY OF THE CRIMINAL LAW OF ENGLAND* 233 (1883).

<sup>2</sup> See, *e.g.*, REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE 74 (1963) [hereinafter cited as ATTORNEY GENERAL'S REPORT]; Foote, *Introduction: The Comparative Study of Conditional Release*, 108 U. PA. L. REV. 290 (1960); Sturz, *An Alternative to the Bail System*, 8 CRIME AND DELINQUENCY 12 (1962); Note, *Bail: An Ancient Practice Reexamined*, 70 YALE L.J. 966, 977 (1961). For early discussions of bail problems, see A. BEELEY, *THE BAIL SYSTEM IN CHICAGO* (1927); CRIMINAL JUSTICE IN CLEVELAND (R. Pound & F. Frankfurter eds. 1922).

<sup>3</sup> The results of the project are analyzed by Ares, Rankin & Sturz, *The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole*, 38 N.Y.U.L. REV. 67 (1963) [hereinafter cited as *Manhattan Bail Project*]. See also Botein, *The Manhattan Bail Project: Its Impact on Criminology and the Criminal Law Processes*, 43 TEXAS L. REV. 319 (1965). The Manhattan Project was instituted largely through the efforts of a New York industrialist, Louis Schwitzer, who established the Vera Foundation. This foundation, as well as the New York University School of Law and the Institute of Judicial Administration, conducted the Project.

<sup>4</sup> See, *e.g.*, R. MOLLEUR, *BAIL REFORM IN THE NATION'S CAPITAL* 31 (1966) [hereinafter cited as *D.C. Bail Study*]. Similar projects conducted in such cities as Chicago, Des Moines, and St. Louis, to name a few, have demonstrated that generally only a negligible percentage of the defendants released on their own recognizance failed to reappear. See *BAIL IN THE UNITED STATES* 56-57, 64-66. Bail practices in the federal courts are governed by the Bail Reform Act of 1966, 18 U.S.C. §§ 3041, 3134-43, 3146-52, 3568 (1970), which was drafted for the express purpose of ensuring that "all persons, regardless of their financial status, shall not needlessly be detained . . . when detention serves neither the ends of justice nor the public interest." Act of June 22, 1966, Pub. L. No. 89-465, § 2, 80 Stat. 214; *cf.* *Stack v. Boyle*, 342 U.S. 1, 4 (1952). For a critical analysis of the provisions of the Act, see Bogomolny & Sonnenreich, *The Bail Reform Act of 1966: Administrative Tail Wagging and Other Legal Problems*, 11 ARIZ. L. REV. 201 (1969).

<sup>5</sup> See, *e.g.*, *Manhattan Bail Project* 72.

interview scale designed to measure the defendant's roots in the community. Based on experience, a numerical scale was developed to evaluate the responses to the questionnaire. If a person scored a sufficient number of points on the questionnaire, he was recommended for release on his own recognizance. The Project succeeded in reaching a substantial number of prisoners and releasing them on their own recognizance.<sup>6</sup>

Since the successful Manhattan Bail Project, nearly 100 bail-reform projects have been started in communities across the country.<sup>7</sup> Texas now has bail-reform projects in Austin and Dallas, as well as plans for an ambitious new project in Houston. While many of the bail-reform projects have been outstanding and their success well publicized, the results have not been uniformly good. Typical of the successes is the well known District of Columbia Bail Project, which reported that it was able to recommend for release forty-nine percent of all prisoners interviewed. Forty-two percent of all prisoners interviewed were actually accepted by the court for release on their own recognizance.<sup>8</sup> Of those released through the Project, 3.2 percent failed to appear for trial and 9.2 percent were rearrested and charged with other offenses during their release period.<sup>9</sup> The Project estimated that the community saved between \$61,000 and \$224,000 because it did not have to house and feed these prisoners while they were awaiting trial.<sup>10</sup> The Connecticut Bail Reform Project reported an even higher percentage of released prisoners and an even lower skip rate.<sup>11</sup>

On the other hand, other bail-reform projects have not shown the spectacular success of these few showcase projects, and even these projects have run into some difficulty, demonstrating that successful bail reform is not automatic. The Connecticut bail program was severely curtailed by the Connecticut General Assembly after two years of successful operation on a large scale.<sup>12</sup> The District of Columbia program has also had difficulty maintaining its high level of performance.<sup>13</sup> The preliminary experiences with bail reform did prompt the federal government to enact the Bail Reform Act of 1966, which became effective September 22, 1966.<sup>14</sup>

The Dallas Pretrial Release Project was sponsored by the Bar Association of the City of Dallas and funded by the Criminal Justice Council of Texas and the Hoblitzelle Foundation. The goals of the Project were to "establish in the city and county of Dallas a program under which certain categories of

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<sup>6</sup> During the period Oct. 16, 1961, through Sept. 20, 1962, for example, the Project recommended 363 defendants for parole. The court accepted the recommendations and paroled the defendants in 60% of the cases. Ares, Rankin & Sturz report that four times as many persons were paroled as a result of the D.C. Project than would have otherwise been the case. *Id.* at 86.

<sup>7</sup> See generally Paulsen, *Pre-trial Release in the United States*, 66 COLUM. L. REV. 109 (1966); Note, *Bail Reform in the State and Federal Systems*, 20 VAND. L. REV. 948 (1967).

<sup>8</sup> D.C. *Bail Study* 43, 44.

<sup>9</sup> *Id.* at 96.

<sup>10</sup> *Id.*

<sup>11</sup> Comment, *The Connecticut Bail Commission*, 79 YALE L.J. 513, 519 (1970).

<sup>12</sup> Pub. Act No. 826, § 54-63b, [1969] Conn. Acts 1536-37. See also Comment, *supra* note 11, at 523-35.

<sup>13</sup> See D.C. *Bail Study* 95.

<sup>14</sup> 18 U.S.C. §§ 3041-43, 3146-52, 3568 (1970). See generally Bogomolny & Sonnenreich, *supra* note 4; Note, *The Bail Reform Act of 1966*, 53 IOWA L. REV. 170 (1967).

prisoners may be released from jail pending trial . . . on personal bond."<sup>15</sup> The basic objective was to assure that persons would not be detained solely because of their financial inability to make bail. There were several anticipated benefits from such a program. "It returns prisoners to their families and jobs pending trial, relieves jail overcrowding with its resultant human misery and unnecessary financial costs, and inspires confidence in the legal system by releasing those who are good risks who might otherwise remain in jail pending trial because of inability to raise bail money."<sup>16</sup>

After one year of operation the Bar Association decided to evaluate the Project to ensure that the goals were being met, the prisoners were being fairly treated, the public interest was being protected, and the public money was being well utilized. The Criminal Justice Programs of Southern Methodist University and the Southern Methodist University Institute of Urban and Environmental Studies agreed to undertake the evaluation. The evaluators had four major goals: (1) To ensure that the operations of the Project were accurately and fairly described; (2) to measure the actual operations of the Project against the goals initially stated in the grant applications; (3) to review the Project to determine whether or not bail reform was appropriate to Dallas, and to Texas in general; and (4) to determine whether there were any problems with institutionalizing bail reform and transferring what has proved to be a successful experiment to other parts of the country. Hopefully, the information gained from this evaluation will be useful to other new projects developing in Texas and elsewhere.

As might be expected, the Dallas Pretrial Release Project was found to be fairly representative of the 100 or so bail-reform projects now in operation across the country, although the skip rate in particular was not nearly as low as that of the showcase projects in the District of Columbia or Connecticut.<sup>17</sup> In contrast to those projects, which lavished attention on a relatively small prisoner population,<sup>18</sup> the Dallas Project covered an enormous prisoner population with a comparatively small staff. With this slightly higher skip rate, the Dallas Project was able to release a substantial number of prisoners who would otherwise have spent considerable time in jail awaiting trial.

This Article will compare the Dallas Project with the District of Columbia Project, but it must be noted at the outset that the comparison is not entirely fair because of the enormous work load that confronted the Dallas Project. The purpose of using the District of Columbia Project as a model for comparison is merely to document the potential that exists in Dallas for a successful program of releasing a large number of prisoners with an unusually low skip rate, and of effecting a substantial savings to the community. In addition, this

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<sup>15</sup> Application of the Dallas Bar Association to the Texas Criminal Justice Council for the Dallas Pretrial Release Project (Apr. 30, 1970).

<sup>16</sup> *Id.*

<sup>17</sup> The skip-rate for the Dallas Project was 5.5%. Cf. Comment, *supra* note 11, at 519 (1.4%); *D.C. Bail Study* 30-47 (3%). But cf. *Manhattan Bail Project* 86-88 (7.4%).

<sup>18</sup> From Oct. 16, 1961, through Apr. 8, 1964, the Manhattan Project interviewed 10,000 out of 13,000 total defendants. During the two-and-one-half years of the operation of the D.C. Project, 5,144 defendants were interviewed. Compare BAIL IN THE UNITED STATES 62-64 with *D.C. Bail Study* 31. During the ten-day research period, alone, the Dallas Project considered 1,199 defendants.

comparison aids in evaluating the general level of performance of the Dallas Project.

### I. LEGISLATIVE AUTHORITY

Although this Article is essentially concerned with evaluating the operation of the Dallas Pretrial Release Project, comparing the Dallas Project with other programs, and developing a series of recommendations for the operation of bail projects, it seems important to review the existing legislative authority available to carry out Texas bail reform and to make brief recommendations for legislation in this area.

The Texas Constitution<sup>19</sup> specifies that all prisoners shall be entitled to bail as a matter of right and prohibits excessive bail.<sup>20</sup> At the time of the evaluation, bail was denied pending trial for capital cases either when the proof was evident<sup>21</sup> or the accused felon had two prior felony convictions and the state presented substantial evidence of the accused's guilt.<sup>22</sup> The Texas Court of Criminal Appeals has indicated that the factors to be considered in a bail hearing are the nature of the offense, the circumstances under which it is committed, and the ability of the accused to make bail.<sup>23</sup> Chapter Seventeen of the Texas Code of Criminal Procedure provides three basic forms of bail. The accused may be permitted to sign a personal bond without surety,<sup>24</sup> he may sign a bond and then deposit cash in the principal amount of the bond with the court in lieu of sureties,<sup>25</sup> or he may make a bail bond with sureties.<sup>26</sup> Although various other provisions are applicable to bail in Texas, the preceding constitutes the basic framework of bail law in the state. The existing state law is, of course, sufficient to allow release on personal bond and thereby enable a pretrial release project such as the Dallas Project to function. However, the variety of alternatives available to a Texas judge considering bail that will assure the defendant's appearance at a later date are limited. For example, a judge does not have the opportunity to release a defendant in the custody of a third person or organization; he cannot allow the defendant to deposit a percentage of the bail amount with the court, to be refunded when the defendant successfully performs his obligation; and, in addition, no governmental unit is required to establish a fact finding or bail agency to help determine the most appropriate method of release.<sup>27</sup> Although authorization exists for the creation of bail agencies in counties with a population of over 1,200,000,<sup>28</sup> this authorization has not yet been utilized by any of the commissioners' courts.

The State of Texas is not presently able to reap the full benefits of bail re-

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<sup>19</sup> TEX. CONST. art. I, § 11.

<sup>20</sup> *Id.* § 13.

<sup>21</sup> The state has the burden of showing that the proof is evident such that a dispassionate jury would, upon trial of the case, not only convict, but assess the death penalty. *Ex parte Colbert*, 452 S.W.2d 454 (Tex. Crim. App. 1970).

<sup>22</sup> TEX. CONST. art. I, § 11. However, it is now apparent that bail can no longer be denied on these grounds. See *Furman v. Georgia*, 92 S. Ct. 2726 (1972).

<sup>23</sup> *Ex parte De Leon*, 455 S.W.2d 260 (Tex. Crim. App. 1970).

<sup>24</sup> TEX. CODE CRIM. PROC. ANN. art. 17.03 (1966).

<sup>25</sup> *Id.* art. 17.02.

<sup>26</sup> *Id.*

<sup>27</sup> See *Carbo v. United States*, 82 S. Ct. 662 (Douglas, Circuit Justice, 1962).

<sup>28</sup> TEX. REV. CIV. STAT. ANN. art. 2372p-1, § 3 (1971).

form. Greater latitude and discretion with respect to the types of release authorized is needed, and a bail agency should be established in each major jurisdiction to ensure an adequate fact finding job before the court issues a release order. Such an agency might also be designed to have supervisory powers over defendants during their period of release. Furthermore, in order to provide a sufficient basis for review of Texas bail cases, a more comprehensive bail review system should be developed which would include written orders and speedy appellate review of bail determinations.

There are two major legislative models which could be adopted to promote reform of the Texas bail system. The Federal Bail Reform Act of 1966<sup>29</sup> could be tailored to fit state needs, as could the ABA minimum standards on pretrial release,<sup>30</sup> which are similar to the Federal Reform Act. Whichever system is adopted, the legislature must recognize that it is not adequate simply to create a system for pretrial release without providing an agency for implementation. Experiences in other areas<sup>31</sup> have indicated that although pretrial release can be of substantial benefit, it also has some drawbacks such as lack of adequate information and inability to verify the information available. These drawbacks can be substantially overcome if a bail agency is created with the mechanism for processing bail applications and supervising the releasees. Thus, many defendants not bailable for a variety of reasons, or who are not good candidates for personal bond, could be released in the custody of an appropriate agency.

The federal experience<sup>32</sup> has shown that a critical factor in reforming a bail system is the cooperation of the judges administering the system. Therefore, the enactment of bail reform legislation in Texas must include a program for educating the judges to insure adequate administration of the system. Although the subject of pretrial release is fairly simple, the necessary attitude toward maximizing release and minimizing detriment to the public is not present among many judicial officers. The pretrial release program is often considered dangerous to society and inappropriate for many defendants. These subjective judicial judgments have not in most instances been borne out by the facts,<sup>33</sup> but such issues must be faced if a program is to be adequately administered.

Bail reform is a worthwhile goal for Texas. It is apparent that a non-monetary bail system would be superior, since monetary considerations are clearly an undesirable element in the present system.<sup>34</sup> To eliminate the present substantial reliance on money bond in Dallas and throughout Texas, priorities of release favoring non-monetary conditions should be developed and emphasized.<sup>35</sup> The state should enact legislation which would authorize maximum utilization of pretrial release with a minimum amount of public danger and distress.

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<sup>29</sup> 18 U.S.C. §§ 3041, 3134-43, 3146-52, 3568 (1970).

<sup>30</sup> AMERICAN BAR ASSOCIATION, PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PRETRIAL RELEASE (1968).

<sup>31</sup> The Manhattan Bail Project and the D.C. Bail Project are particular examples.

<sup>32</sup> See note 14 *supra*.

<sup>33</sup> See, e.g., the material on recidivism, notes 35-36 *infra*, and accompanying text.

<sup>34</sup> If for no other reason because of the discrimination against the poor. See, e.g., R. GOLDFARB, RANSOM: A CRITIQUE OF THE AMERICAN BAIL SYSTEM 92-126 (1965).

<sup>35</sup> Cf. The Bail Reform Act of 1966, 18 U.S.C. § 3146 (1970).

## II. EVALUATION TECHNIQUES

Three basic techniques were used to evaluate the Dallas Pretrial Release Project. All available data on the Project was reviewed and the case of every person released by the Dallas Project was studied to determine the impact of the release and to verify the information being supplied by the Project. In addition, the evaluators interviewed prisoners being considered by the Project during the ten-day evaluation period in order to determine whether the Project was in fact releasing every good prospect. Finally, a control group was developed consisting of randomly selected cases from the year immediately prior to the operation of the Pretrial Release Project. Severe problems in collecting data were encountered, but an accurate and fairly complete picture of the Dallas Pretrial Release Project was developed from which general conclusions useful to the field of bail and pretrial release outside of Dallas can be drawn. The problems encountered in collecting each group of data will be explained as the data is presented.

## III. SCREENING PROCEDURE OF THE DALLAS PRETRIAL RELEASE PROJECT

*General Observations.* Over a ten-day period the evaluators accompanied the Project staff member through his daily routine and noted the procedures followed in screening prisoners for release. As a result, certain characteristics of the Project's work were noticed immediately. First, the screening process itself was significantly different from that used in either the Manhattan Project or the District of Columbia Project. The Dallas Project operated on the premise that whether a prisoner was a good risk could ordinarily be determined by review of his file or a short interview. Therefore, the staff concentrated on the prisoner's past record and decided from that whether it would be advisable to proceed further with him. Although every project uses past records for screening purposes, the Dallas Project placed significantly more weight on past records and court files and less emphasis on interviews than other projects. This seems to be a policy decision of great importance that could have a significant impact on the Project's results. Second, the Dallas Project has developed a series of informal exclusions which are not clearly reflected in the Project's monthly reports. It was necessary to place observers with Project staff members to review the process and determine as accurately as possible what the reasons were for such informal exclusions of potential releases. However, the presence of the evaluators threatened to cause the Project to change its operations. To minimize this distortion, the evaluators were instructed to refrain from commenting on the decisions made by the Project staff. While some distortion likely occurred, the Project staff indicated that the presence of the evaluators did not significantly change operating procedures. The evaluators confirmed this statement, saying that it was consistent with their observations. Third, the Dallas prison population is large, and far more prisoners were exposed to the Project's screening process each day than the number screened

through the District of Columbia Bail Project.<sup>86</sup> In the ten-day evaluation period, 1,199 prisoners [hereinafter referred to as the research sample] were screened by the Dallas Project. Fourth, the Dallas Project was very selective in choosing the prisoners to be given full screening and released, giving the great majority of prisoners only summary treatment.

*The Screening Process at the County Jail.* The Dallas Pretrial Release operation has three more or less independent branches, one at the city jail, one at the county jail, and the third releasing prisoners on the request of their attorneys. Differences in procedure at the city and county facilities cause the pretrial release staff interviewer to go through different steps at the different locations. At the county jail, the interviewer starts the day by checking the log of prisoners brought in the day before. This log is complete and includes a number of prisoners not eligible for release. Persons absent without leave from military service and illegal immigrants awaiting the arrival of the United States Immigration Officer are examples. The interviewer goes through the log which lists the prisoners and the offense with which each is charged. If the prisoner has already made bail, it will often appear on the log or the information will be available from a set of master cards kept at the desk where the logbook is located. The logbook may indicate what judge is assigned to the case and other background data about the prisoner. This process constitutes "preliminary screening" and the majority of prisoners are excluded at this stage. Table 1 shows the reasons why county prisoners are excluded from further consideration by the Project at this step.

TABLE 1  
Research Sample  
Prisoners Excluded in Preliminary  
Screening, County

<i>Reasons</i>		<i>Number</i>
Excluded due to type of offense		
Drugs	69	
Aggravated assault	1	
Armed robbery	10	
Assault on police officer	4	
Assault to murder	10	
Murder	2	
Threats	28	
Sex related	15	
Peace bond	7	146
Posted Bond		367
Released, reason not specified		78
Assigned to an unfavorable judge <sup>87</sup>		21
Previously considered by Pretrial Release and excluded		1

<sup>86</sup> The D.C. Bail Project interviewed 5,144 defendants during the two and one-half years of its operation. These defendants were from a total starter population of 26,011. *D.C. Bail Study* 30-31. In Dallas, on the other hand, the total starter population is approximately 40,000.

<sup>87</sup> The category "assigned to an unfavorable judge" shows that the interviewer, knowing that some judges will not sign pretrial release bonds, excluded prisoners assigned to them.



Application to go off bond has been filed for prisoner	1
Mental instability	3
Previous bond forfeiture	3
Number of pending offenses	11
Gang offense <sup>38</sup>	2
Residence out of area	20
TOTAL	<u>653</u>

The county interviewer, after he has excluded prisoners in preliminary screening, is left with between five and thirty names of prisoners who appear to be good prospects for release. He notes the name, offense, race, sex, and age and then evaluates each prisoner's personal prison file. In many cases after inspection of the files, the interviewer will decide that the prisoner is not a good prospect. Table 2 below shows the reasons for the exclusion of prisoners at this stage.

TABLE 2  
Research Sample  
Prisoners Excluded on Inspection of File, County

<i>Reasons</i>		<i>Number</i>
Nature of prior record		
Number of offenses	30	
Type of offenses	16	
Mental instability	3	
Aliases	<u>3</u>	52
Gang member		1
Number of outstanding tickets		1
Prisoner on probation, parole, or on bond for another offense		19
Prisoner released during record search		4
No ties		16
Subjective bad risk <sup>39</sup>		15
TOTAL		<u>108</u>

At this point, the county interviewer has often made a decision, though not an irreversible one, to release the remaining prisoners. From the 786 prisoners that passed through the screening process at the county jail while the evaluators were observing the Project, twenty-five were actually interviewed and thirteen recommended for release. The twelve exclusions were based on interviews with the defendants.<sup>40</sup>

<sup>38</sup> The line "gang offense" shows that the interviewer, noting that two or more people have the same date and time of arrest and have been charged with the same offense, has surmised that they committed the offense as a group and elected to proceed no further.

<sup>39</sup> The line "subjective bad risk" means that the interviewer could not point to any specific item in the prisoner's record that made him seem a bad risk, but nevertheless felt that the file, on the whole, conclusively indicated a likelihood that the prisoner would be a bad risk.

<sup>40</sup>

TABLE 3  
Research Sample  
Prisoners Excluded in Interview, County

<i>Reasons</i>	<i>Number</i>
No ties	3
Made bond	1

*The Screening Process at the City Jail.* At the city jail, the interviewer begins with a list of prisoners called a "jail audit." This is not a complete list of prisoners in the city jail, but it does contain most of those whom the Project would consider.<sup>41</sup> He follows an analogous procedure with the city jail audit as he did with the county jail log. Usually the only information that he has is the name of the prisoner and the offense with which he is charged. He cannot determine to which judge the prisoner will be assigned, if the prisoner is charged with a misdemeanor, or whether the prisoner has already made bond. Table 4 shows the reasons for which prisoners are excluded at the city jail in preliminary screening.

TABLE 4  
Research Sample  
Prisoners Excluded in Preliminary  
Screening, City

<i>Reasons</i>		<i>Number</i>
Excluded due to type of offense		
Drugs	89	
Robbery	15	
Assault to murder	10	
Assault	3	
Aggravated assault on police officer	3	
Sex offense	13	
Murder	3	
Maiming	1	
	<hr/>	137
Gang offense		32
Prisoner in hospital or otherwise unavailable		5
Hold for other agency		5
Number of offenses pending		2
Prisoner a parole violator		1
		<hr/>
TOTAL		182

After preliminary screening, the city interviewer goes to the fourth floor of the city jail building and requests the files of the prisoners he has decided to consider. Since it takes some time for the clerks to get these files, as soon as he has made his request the interviewer goes directly to the jail to interview prisoners. Although on occasion he will interview all prisoners planned for consideration, often he will talk only with the prisoners charged with driving while intoxicated (DWI) since they are numerous and are felt to be good prospects for personal bond. Table 5 shows the reasons for exclusion of prisoners from the Project after these initial interviews.

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Subjective bad risk	1
Previous pretrial release bond forfeiture	1
Police requested that prisoner not be released	3
Mental instability	2
Record indicates trend toward future criminal behavior	1
	<hr/>
TOTAL	12

<sup>41</sup> The list sets out investigational arrests for that police shift.

TABLE 5  
Research Sample  
Prisoners Excluded in Preliminary  
Prisoners Excluded in Interview, City

<i>Reasons</i>	<i>Number</i>
Has attorney <sup>42</sup>	31
Prisoner has made bond or arrangement for release	29
Prisoner already released	12
No ties	26
Prisoner not available for interview	8
Prisoner on probation, parole, or bond for another offense	10
Prior serious offenses admitted to in interview	3
Out of county resident	2
Hold for another agency	1
Prisoner incoherent	1
Prisoner appears to have DT's	1
Prisoner reportedly has suicidal tendencies	1
Prisoner reportedly has history of alcoholism <sup>43</sup>	1
Current offense drug related <sup>44</sup>	1
Making arrangements <sup>45</sup>	1
TOTAL	<u>128</u>

The city interviewer returns to the files after he has completed his interviews. He has usually made a decision about some of the prisoners; he may, in fact, have in his hand the completed bonds of one or two prisoners to take the judge to sign, at the same time eliminating all others from further consideration. At other times, there will be prisoners about whom he still has doubt. After inspecting the files, the city interviewer makes the additional exclusions shown in Table 6.

TABLE 6  
Research Sample  
Prisoners Excluded on Inspection of File, City

<i>Reasons</i>	<i>Number</i>
Offense in previous record considered too serious	
Same as current offense	6
Assault to murder	3
Theft	3
Drug offense	2

<sup>42</sup> The line "has attorney" shows that the Project would not consider for release a prisoner who had an attorney unless requested by the attorney. In one case, the Project was ready to revoke a recommendation that a prisoner be released on personal bond at the request of an attorney who had belatedly entered the picture and wished to make his own arrangement for release.

<sup>43</sup> Usually, this means the defendant has a record of several DWI arrests.

<sup>44</sup> This usually means the defendant is suspected of heroin addiction.

<sup>45</sup> The line "making arrangements" shows the prisoner was far enough along in securing his own release that the Project elected to proceed no further with him.

Murder	1	
Armed robbery	1	16
Number of previous offenses considered too serious		17
Prisoner on probation		10
Reduced to city offense		2
Subjective bad risk		2
No ties		2
Prisoner has used aliases		1
TOTAL		<u>50</u>

The city interviewer may then return to the jail to interview additional prisoners. If he has interviewed only DWI's earlier, he will need to interview the remaining prisoners, but sometimes the city interviewer is unable to return to the jail before the end of the half-day allotted for the city branch. As a result, thirty-three prisoners at the city jail were neither excluded nor released. The interviewer simply did not get to them.

*Comparison of County and City Procedures.* During the ten-day period a total of 1,199 prisoners were considered by the pretrial release program in the city and county jails and twenty-eight prisoners were released through the program. Table 7 shows the broad operation of the daily screening process. As the table indicates, more prisoners were interviewed at the city jail, but some prisoners were never even considered for release from the city jail.

TABLE 7  
Research Sample  
Summary of Screening Procedures

	<i>City</i>	<i>County</i>	<i>Total</i>
Total releasable prison population	413	786	1,199
Excluded in preliminary screening	182	653	835
Excluded on inspection of file	50	108	158
Excluded in interview	128	12	140
Recommended for release	17	13	30
Released	17	11	28
Not considered	33	0	33
Unexplained	3	0	3

*Attorney Requests and "Walk-Ins."* During the course of an average day, there are several requests by attorneys for the Project to get a client out of jail. These requests are noted and given to the interviewer to review. It is the stated policy of the Project to consider a prisoner more favorably if his release has been requested by an attorney. In addition, if the person himself, knowing that there is a warrant out for his arrest, comes to the office and asks for a pretrial release bond, the Project will consider him separately, particularly when the offense is passing worthless checks. These requests for release from attorneys and prospective arrestees, although they do not expose the Project to nearly as

many prisoners as the 1,199 passing through the screening routine, result in a comparatively large number of releasees. During the ten-day interview period, a total of twenty-eight prisoners were released through the Project's screening procedures. On those days, however, an additional twenty-four prisoners were released through attorney referrals and "walk-ins."

#### IV. THE RELEASED POPULATION

The evaluators reviewed the total work of the Project since its inception on July 1, 1970. Table 8 lists, according to offense, all prisoners who had been released from the beginning of the Project to June 1, 1971. As the table shows, defendants accused of passing worthless checks accounted for a disproportionately large number of releasees compared with the percentage of such offenders to the total arrest population in Dallas County.<sup>46</sup> This confirms the observation that a large number of the "walk-ins," most of whom are accused of passing worthless checks, are treated favorably by the Project. Moreover, a small number of defendants were released by the Project although they were accused of offenses that were excludable under original Project standards. There were fourteen releasees accused of drug offenses, three accused of murder, and one accused of rape.<sup>47</sup> As expected, DWI's constituted the largest number of defendants released and make up a large percentage of all defendants charged in Dallas.<sup>48</sup>

TABLE 8  
Released Population  
from July 1, 1970, to June 1, 1971  
(by Offense)

<i>Offense</i>	<i>Number</i>
Driving while intoxicated	256
Passing worthless checks	104
Burglary	99
Theft over \$50	108
Carrying prohibited weapon	36
Shoplifting	27
Theft under \$50	24
Driving with license suspended	22
Forgery	23
Assault	18
Assault to murder	21
Breaking and entering motor vehicle	17
Destroying private property	17
Drug offense	14
Breaking and entering coin operated machine	9
Theft of credit card	6
Embezzlement	7
Robbery	7
No drivers license	3
Murder	3

<sup>46</sup> See table 11 *infra*.

<sup>47</sup> These represent unusual cases and often are recommended for release by the judge or an assistant District Attorney.

<sup>48</sup> See table 11 *infra*.

Obscene phone calls	3
Aggravated assault male on female	3
Arson	2
Child desertion	2
Bookmaking	2
Failure to stop and render aid	2
Receiving and concealing	2
Fondling	2
Aggravated assault on police officer	2
Rape	1
Impersonating a female	1
Joyriding	1
Water pollution	1
Threats	1
<b>TOTAL</b>	<b>846<sup>49</sup></b>

*Average Time To Release.* One of the most striking findings of the evaluation is that the Project is unusually slow in releasing prisoners. Most other bail reform projects have reported that their method of release is faster than the traditional bail method.<sup>50</sup> On the average it took slightly more than nine days for a prisoner to be released by the Dallas Project. The traditional money bail method is faster.<sup>51</sup> Possibly, the reason for the unusually high average release time is the practice of considering a large number of attorney referrals and "walk-ins." The average release time for prisoners released on money bonds during the ten-day evaluation period, by contrast, was between one and two days. If the Project would rely more on the ordinary screening procedures employed by other projects, the average release time would be lowered.

*The Skip Rate.* It might be expected that because of the great selectivity used in the Dallas Project to determine who would be released the skip rate would be unusually low. However, this has not proved to be the case. Of the 846 prisoners released at the time of the evaluation, 469 had their cases terminated; of these, forty-three had a bond forfeiture. However, in addition to these 469 prisoners, 128 had had at least one court setting. Using these 597 prisoners as

<sup>49</sup> This figure was compiled by tabulating all personal bonds collected in the Project's files and made available to the evaluators. Project figures may be somewhat higher because of earlier record keeping discrepancies or a tendency to count cases, rather than defendants released.

<sup>50</sup> In the D.C. Project, interview, verification, and recommendation usually took place only after bond had been set at the accused's initial appearance. The Project was able to present recommendations in periods of time ranging from a few hours after an accused's first appearance to the next day. *D.C. Bail Study* 24. In the Manhattan Bail Project the median time in jail between arraignment and adjudication was thirty-two days. Only 19% of the defendants studied spent no time in jail after the initial arraignment. The median time spent in jail between arraignment and sentence was fifty-five days. *Manhattan Bail Project* 83, table 8. The bail reform projects aside, in 1960, 23,811 persons accused of federal offenses were held in custody pending trial. The average length of detention was 25.3 days. In 1970 detainees accounted for 20% of the population of the jails of Philadelphia, with an average detention of 26 days. See *BAIL IN THE UNITED STATES* 20, 40; cf. *Smith v. United States*, 335 F.2d 270 (D.C. Cir. 1964). For the correlation between the outcome of a trial and release from jail prior to trial, see Rankin, *The Effect of Pretrial Detention*, 39 N.Y.U.L. REV. 641 (1964).

<sup>51</sup> A bondsman by avoiding any need for background information can often secure release of an accused within hours after arrest. Stationhouse bail and endorsing the bail amount on the warrant are two methods widely used. See *BAIL IN THE UNITED STATES* 80-81.

the base, the critical skip rate was 7.2 percent of those required by the court to appear during the evaluation period. But of the forty-three bond forfeitures, eleven were eventually set aside because the prisoner subsequently appeared for trial, or for some other reason. Counting only the thirty-two prisoners whose forfeitures were never set aside, the skip rate was 5.5 percent. Therefore, the fairest way to describe the skip rate is to say that it was between 5.5 and 7.2 percent, since some, but not all, of the bond forfeitures that were set aside were set aside for reasons other than the voluntary appearance of the defendant.

While this skip rate is not unusually high, neither is it unusually low. The Connecticut Bail Reform Project reported a rate of non-appearance of about 2.8 percent.<sup>52</sup> The District of Columbia Project reported a non-appearance rate of 3.0 percent.<sup>53</sup> The non-appearance rate for Dallas prisoners who were released on money bail is between 6.1 percent and 7.0 percent, so that the Project appeared to do approximately as well as the money bail system in selecting good prospects for release. Nevertheless, this rather high rate is disappointing, especially in view of the small number of prisoners released and the high selectivity involved. This confirms the evaluators' conclusion that the subjective screening process used by the Project did not locate the best prospects for release.

In addition, this somewhat higher skip rate appears to be partially the result of a lack of systematic follow-up on the prisoners after they are released. The average releasee from the Dallas Project is informed of his obligation to appear when his bond is filled out, usually while the prisoner is still in jail. In many cases this may be the prisoner's last personal contact with the Project. By contrast, the District of Columbia Project reports that after release each prisoner was advised of the necessity of his appearance by a staff member; was notified by letter five days in advance of his required appearance; and, in the case of felony defendants, each one was asked to call the Project office each week. In addition, the District of Columbia Project wrote a letter to the references given by the prisoner reminding them of the prisoner's trial date.<sup>54</sup> The Manhattan Project often notified defendants by phone a day or two before they were due to return for trial.<sup>55</sup> The Dallas Project employed no follow-up except a letter reminding the prisoner of his court appearance, and this letter was not sent to every prisoner. The letter is now sent only to those prisoners who appear on the docket sheet of the court as being represented by the Pretrial Release office. Those who already have attorneys are not advised by the Pretrial Release office of their impending court appearance.

It must be pointed out that many prisoners do have contact with the Project after they are released. For example, they are asked to call in once they have an attorney. But this contact is not systematic and is not aimed at making the prisoner appear for trial. Therefore, the evaluators concluded that a more

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<sup>52</sup> Comment, *supra* note 11, at 518.

<sup>53</sup> *D.C. Bail Study* 31.

<sup>54</sup> *Id.* at 24.

<sup>55</sup> The actual procedure involved a letter sent to each parolee telling him when and where to appear, noting the exact location of the court. An illiterate parolee was telephoned as well as notified by mail. A non-native speaker received notification in his native language. Finally, if another person had agreed to aid the parolee in getting out of jail, a notification letter was sent to him as well. *Manhattan Bail Project* 75.

systematic and thorough process of follow-up would significantly reduce the skip rate of the prisoners released through the Dallas Project. In fact, experiments run in New York and Washington indicate that telephoning defendants who are due to appear or do not appear is often sufficient to procure a defendant's appearance.<sup>56</sup>

*The Recidivist Rate.* The recidivist rate for the Dallas Project was significantly lower than that reported in the District of Columbia Project. Of the 846 prisoners released by the Dallas Project, thirty had been subsequently rearrested and charged with a violation other than a traffic offense or a city offense during their period of release.<sup>57</sup> This produced a recidivist rate of 3.6 percent as compared with the District of Columbia recidivist rate of 9.2 percent.<sup>58</sup> Apparently, one reason for this low recidivist rate is that a large number of the released prisoners were persons charged with driving while intoxicated or passing worthless checks. These two offenses introduce into the criminal system a large number of people who do not appear in the criminal population of many other jurisdictions. By contrast, the District of Columbia release population contained no persons charged with driving while intoxicated and a large number of persons charged with offenses which were excludable in the Dallas Project, such as robbery, rape, homicide, and narcotic violations. Since nearly one-fourth of the Dallas prisoner population is charged with driving while intoxicated, the number of releasees probably could be significantly increased without any change in this very low recidivist rate.

## V. THE CONTROL POPULATION

In order to measure the impact of the pretrial release program on the Dallas prison population, the evaluators constructed a control sample of 1,000 prisoners from the Dallas jail population for the year prior to institution of the Project. The number of prisoners included in the control sample from each source, city and county, was based on the number of prisoners that were seen at the city and the county jails during the interview period.<sup>59</sup> The previous year's log books, which are similar to the log books used by the Project interviewer each day, were the source of the random sample of county prisoners for the prior year. The city sample came from the daily records of arraignments kept by the city clerk. Beginning with January 1970, the arraignments accurately reflect the city prison population. Prior to January 1970, however, those charged with driving while intoxicated were not arraigned in the city courts so that the sample is skewed by this omission. Despite its limitations, the control sample substantially represents the Dallas jail population, and fairly reflects the experience of the prison population before institution of the Pretrial Release program.

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<sup>56</sup> Cf. *Manhattan Bail Project* 75.

<sup>57</sup> See table 8 *supra*.

<sup>58</sup> *D.C. Bail Study* 44.

<sup>59</sup> This method of estimating the ratio of county to city is probably inaccurate, although insignificant since we did not notice substantial differences between the city and county population. Moreover, the sample suffers from a lack of records at the city jail whereas better records are available at the county jail.



*The Release Rate.* As Table 9 indicates 69.4 percent of those arrested were released on bond, while approximately twenty percent remained in jail until their trial. Seventy-five percent of the prisoners in the control group were either released outright or were released on bond or on a writ. The percentage of prisoners detained until trial is somewhat below the national average.<sup>60</sup>

TABLE 9  
Control Group  
Results of Arrest

Released on bond	694
Not released	199
Released, no charges filed	55
Released for other reasons	49 <sup>61</sup>
Reduced to city offense	3 <sup>62</sup>
TOTAL	<u>1,000</u>

*The Skip Rate.* At the time of the evaluation, 559 of the control group cases had been terminated and an additional sixty-six prisoners had had at least one court setting. Of these 625 prisoners, forty-four had forfeited bond. Therefore, the skip rate was 7.0 percent. Of the forty-four prisoners forfeiting bond, however, six later had the forfeiture set aside. Counting as forfeitures only those prisoners whose forfeiture was never set aside, the skip rate was 6.1 percent. Thus, it is fair to say that the skip rate for the control group was between 6.1 and 7.0 percent. This figure is comparable to the 5.5 to 7.2 percent rate achieved by the Project.

*The Recidivist Rate.* Out of the sample of 1,000, a total of 694 prisoners were released prior to trial. Of these, ninety-eight were rearrested and charged with committing an offense while awaiting trial. Thus, 14.1 percent of those released through the money bail system were subsequently arrested and charged with an offense during their period of release.

TABLE 10  
Control Group  
Recidivists by Offense

<i>Offense</i>	<i>Number</i>
Drugs	20
Driving while intoxicated	15
Theft over \$50	9
Burglary	8
Carrying a prohibited weapon	6
Shoplifting	6
Driving with license suspended	6
Forgery	5

<sup>60</sup> See BAIL IN THE UNITED STATES 40.

<sup>61</sup> "Released for other reasons" reflects persons released to other law enforcement agencies—the United States marshal, for example—to juvenile authorities, or who gained a miscellaneous release.

<sup>62</sup> "Reduced to city offense" means the charge, originally a violation of state laws, was reduced to a violation of a municipal ordinance, thus excluding the prisoner from those who would be considered by the Dallas Project.

Passing worthless checks	4
Aggravated assault	4
Threats	2
Murder	2
Armed robbery	1
Rape	1
Aggravated assault on a police officer	2
Attempted bribery of a police officer	1
Assault to murder	1
Theft under \$50	1
Breaking and entering motor vehicle	1
Child desertion	1
Liquor law violation	1
Extortion	1
TOTAL	<u>98</u>

Two important conclusions are apparent from Table 10. First, the money bail system is inadequate as a means of protecting society from those people who are likely to commit future crimes; the Project showed a far lower recidivist rate. Second, certain drug offenders appear to have a disproportionate propensity to commit an offense if released.<sup>63</sup>

*Time to Trial.* The average time between the day of arrest and the date of trial for the control group was 119 days. Assuming that the cost of maintaining a prisoner for one day is \$7.50,<sup>64</sup> the total average saving to the county for releasing one prisoner to trial, who would not otherwise have been released, is \$892.50.

## VI. CONCLUSIONS

*Total Prison Population.* The Dallas prisoner population is indeed large; in the ten days in which evaluation interviews were conducted, the prison population totaled 1,199 prisoners. If this ten-day period is representative of a year's population, over 40,000 prisoners pass through the city and county jails each year. In contrast, the District of Columbia Bail Project reported only 26,000 prisoners in a two-and-one-half-year period.<sup>65</sup> In addition, the District of Columbia Bail Project did not consider all 26,000 of these prisoners, but only interviewed a sample of just over 5,000.<sup>66</sup> At all times the District of Columbia Project had from seven to twelve members of its staff available to handle the load.<sup>67</sup> The Dallas Project, by contrast, usually had only four people, one of them part-time, to process its large prisoner population. This may partly explain why the overwhelming majority of prisoners in the Dallas Project received only summary consideration.

<sup>63</sup> A number of distinct offenses have been included under the heading "drug offenses." Although valid distinctions between types of drug offenses could be made, such a project is beyond the scope of this Article.

<sup>64</sup> Letter from Al Maddox, Jr., Executive Assistant to Clarence Jones, Sheriff of Dallas County, to Sam Copper, Director, Pretrial Release Project, Nov. 24, 1971.

<sup>65</sup> *D.C. Bail Study* 30.

<sup>66</sup> *Id.* at 31.

<sup>67</sup> *Id.* at 21-22.

TABLE 11  
Research Sample  
Prison Population by Offense

Offense	Number	Offense	Number
Driving while intoxicated	303	Rape	12
Drugs	183	Driving under the influence of drugs	6
Theft over \$50	126	No driver's license	5
Burglary	67	Murder	6
Shoplifting	41	Fondling	5
Carrying prohibited weapon	69	Forgery	18
Driving while license suspended	42	Sodomy	5
Assault to murder	28	Passing worthless checks	33
Aggravated assault on police officer	13	Peace bond	7
Threats	28	Indecent exposure	6
Assault	33	Receiving and concealing	2
Theft under \$50	23	Procuring	2
Robbery	33	Breaking and entering coin operated machine	3
Breaking and entering motor vehicle	24	Defrauding innkeeper	3
Destruction of private property	22	Arson	2
Liquor law violation	11	Maiming	1
Permitting boxing round more than three minutes	1	Failure to stop and render aid	1
Obtaining telephone communications by fraud	1	Vagrancy	1
Attempted murder	1	False statement	1
School attendance law	1	Possession of slot machine	1
Child desertion	1	Bawdy house	1
Selling obscene matter	6	Embezzlement	1
Aggravated assault male on female	17	Flag desecration	2
		Unknown	1
TOTAL - 1,199			

*DWI and Other Non-Violent Crimes.* A very important feature of the Dallas prisoner population is the large number of prisoners charged with driving while intoxicated. Of the 1,199 prisoners considered in the ten-day interview period, 303 were charged with this offense. Assuming that the research sample is an accurate reflection of the total annual prison population,<sup>68</sup> over one-fourth of the total prison population is charged with driving while intoxicated. This subset of the prison population contains a large number of excellent prospects for release, and, in fact, DWI's accounted for twelve of the twenty-eight prisoners released through the Project during the evaluation period.

If carrying a prohibited weapon, assault to murder, aggravated assault on a female, aggravated assault on police officers, assault, robbery, rape, murder, arson, maiming, and attempted murder are classified as crimes of violence, it can be seen that 218 of the 1,199 defendants within the research sample committed crimes of violence. This constitutes approximately eighteen percent of

<sup>68</sup> See table 11 *supra*.

the prison population. If eighty-two percent of the crimes are non-violent in Dallas County, the criminal population might be considered an excellent one for purposes of pretrial release. Examination of the District of Columbia population indicates that better than fifty percent of all defendants in the prison population studied by that Project committed crimes which could be categorized as crimes of violence.<sup>69</sup> In addition, more than fifty percent of all defendants granted pretrial release in the District of Columbia Project were charged with crimes of violence.<sup>70</sup>

*Procedural Problems Unique to Dallas.* The Dallas Pretrial Release Project was faced with a unique problem because of the unusual pre-arraignment procedure used in Dallas. Many defendants in Dallas are arrested and charged with investigative crimes, *i.e.*, investigation armed robbery, investigation drug offense. While under arrest for investigative charges, they are not necessarily immediately presented to the court. Therefore, unlike the District of Columbia or the New York projects where the bail agency can station a person in the arraignment court and normally expect to see promptly every defendant who is arrested, in Dallas County the Project must operate at two separate places and visit many parts of the jail to get the names of the prisoners, their prior records, and to interview them. This further stretches a staff already burdened with an enormous population. This procedure also presents other problems. In the District of Columbia, for example, when an interviewed defendant was in court being processed for a crime, the judge would hold a bail hearing and the subject of his release would be handled in the course of judicial proceedings. In Dallas County, however, when a defendant is being held on investigative arrest, he is not subject to an ordinary court proceeding. Therefore, in order to gain release, he must seek habeas corpus aided by a private attorney, or the Project must take the recommendation for release to a court in session and request action outside the presence of the defendant and the prosecution. This is undesirable for several reasons. First, the procedure does not allow the judge the opportunity to see the defendant and to ask him questions to determine the validity of the Project's recommendation concerning his release. Furthermore, since the defendant is not then represented by an attorney and since the Pretrial Project is not an advocate but rather an independent investigative agency, no one directly represents the needs or the desires of the arrested defendant. Finally, since the procedure is not an actual court hearing, the order denying or granting personal bail is usually not reviewable.<sup>71</sup> The Project staff shows substantial ingenuity in developing methods for presenting their recommendations to the various courts and judges. But the lack of formalized procedure and the failure to provide adequately for appeal leads to the situation in which certain prisoners simply are not recommended for release because the prospective judge has arbitrarily determined not to honor the program of the Pretrial Release Project. Once this has happened, the Project is forced to allow people to remain in jail who otherwise would have been recommended

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<sup>69</sup> D.C. Bail Study 50.

<sup>70</sup> *Id.*

<sup>71</sup> Observation of a Dallas, Texas, Pretrial Hearing, Dallas County, Texas, June 17, 1971.

for release. This, of course, is hardly conducive to the administration of justice, but absent appellate procedures and formalized hearings on the subject there seems to be no alternative available.

Because the Project does not see the prisoners at the first possible moment, *i.e.*, the first moment bond can be posted, a substantial number post bond before they are interviewed by the Project. Tables 1-6 show that slightly less than 50% of a potential 1,199 have already posted bail prior to their names coming before the project. Since one goal of the Pretrial Release Project is to gain release without bail for as many people as possible, the existence of so many people who are already excluded from the project sample by reason of their posting bail is, of course, detrimental to the operation of the Project. This is not a startlingly significant problem because the overall idea is to release people who are appropriate for release, and the method of release is not as important as the fact that they do not stay in jail before trial. At the same time, experience suggests that many of the people who make money bond endure substantial personal hardship in raising the money, which is never refunded when they appear in court. A man, even though found innocent or released without charges, still pays a substantial price. Once again, this result is a function of the local procedure which does not automatically require a regular court appearance for purposes of bail setting.

*Summary Exclusions from the Program.* In its application for a grant, the Project proposed to exclude "those prisoners charged with homicide, armed robbery, certain sex crimes, and most narcotics offenses."<sup>72</sup> During the special interview period it was found that the Project excluded not "certain sex crimes" but all sex offenses, including indecent exposure, selling obscene material, and sometimes aggravated assault—male on female. Similarly, the Project excluded not only narcotics offenses but all drug-related offenses, including driving under the influence of drugs,<sup>73</sup> violation of the Dangerous Drugs Act,<sup>74</sup> forging a prescription,<sup>75</sup> and possession of marijuana.<sup>76</sup> In addition to construing its stated exclusions broadly, the Project developed some further exclusions—some very reasonable, others more difficult to understand. The project excluded all those charged with assault on police officers, armed robbery, threats, violation of peace bond, and other assaults, none of which were proposed to be excluded at the start of the Project. In addition to those prisoners who were excluded because their offense was thought too serious, prisoners were excluded if they committed a group offense, or were arrested for more than one offense, if it appeared that the prisoner had ever used an alias (other than a nickname), if the prisoner had an attorney at the time the Project considered him, or if the police or some other agency requested that the prisoner not be released.

Assuming that it is in the best interests of the Project to construe its ex-

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<sup>72</sup> Application of the Dallas Bar Association to the Texas Criminal Justice Council for the Dallas Pretrial Release Project (Apr. 30, 1970).

<sup>73</sup> TEX. PEN. CODE ANN. art. 802a-1 (1969).

<sup>74</sup> *Id.* art. 725b.

<sup>75</sup> *Id.* art. 725b, § 20.

<sup>76</sup> See generally *D.C. Bail Study*. The Project will now recommend some defendants charged with possession of marijuana if they do not have any other criminal record.

clusions as broadly as possible, and that the exclusion of all those charged with aggravated assault on a police officer is the wisest course, there are still 132 prisoners who were summarily excluded for reasons neither initially proposed nor logically related to those initial exclusions. For example, three or four people committing one particular criminal offense does not necessarily indicate that those defendants will be less likely to appear for trial or will be a danger to the community. The use of aliases is also not a fact that necessarily should influence the release decision. The use of an alias does not lessen the likelihood that a particular defendant will appear for trial. Furthermore, if the Project exclusions were read more narrowly, it is likely that a significant number of the 183 drug offenders (sixteen percent of the total population) would be found to be good prospects. For example, a substantial number of marijuana users are normally considered appropriate for release.<sup>77</sup>

*Comparison with the District of Columbia Project.* During the research sample period, the Project considered 364 prisoners beyond the preliminary screening stage. The evaluators interviewed exhaustively to determine how many of this group would have been eligible for release under standards applied in other projects. For purposes of rough comparison the Dallas Project is compared with the District of Columbia Project since the methods and standards of that Project are well documented.<sup>78</sup> The District of Columbia Project used an objective scoring system which allows the prisoner certain numbers of points if he has characteristics that establish ties to the community. For example, the prisoner was awarded three points if he had lived at his present residence in the area for one year or more.<sup>79</sup> The prisoner was entitled to four points if currently employed in a job which he had held for one year or more, the employer being willing to take him back despite his arrest. Four points or more were necessary for release, and the highest possible score on the scale was thirteen points.<sup>80</sup> None of the prisoners interviewed in Dallas were able to achieve a score of thirteen because, in some cases, the maximum number of points depended on information which was unavailable. This omission was resolved against the prisoner.

TABLE 12  
Scores of Dallas Prisoners  
Interviewed on D.C. Scale

<i>Points</i>	<i>Prisoners</i>
11	16
10	14
9	24
8	31
7	37
6	26
5	16
4	13

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 24-25.

<sup>79</sup> *Id.* appendix at A-75.

<sup>80</sup> *Id.* appendix at A-81.

3	14
2	4
1	6
0	7
Excludable by D.C. standards	53
Presumed non-recommendable by D.C. standards	12
Non-recommendable by D.C. standards	1
Unavailable for interview	90
TOTAL	<u>364</u>

Despite the slight bias against release, 177 of the 274 prisoners that were interviewed would have been considered suitable for release by the District of Columbia Project. Of course, the information on which this figure is based comes from the prisoners themselves, and some may not have told the truth. The evaluators who did the interviewing reported instances of prisoners not telling the truth about their prior records, but the basic accuracy of the tables is not undermined for two reasons: first, the scoring of the prisoners was done with a bias against release, not in favor of it,<sup>81</sup> and second, other projects report that, while some prisoners do lie, most do not.<sup>82</sup> In other words the Dallas Project recommended for release 30 prisoners, whereas the District of Columbia Project would have recommended approximately 177 prisoners. Instead of releasing nearly 100 prisoners each month, the Dallas Project could probably release approximately 375 prisoners a month with no change in its strict interpretation of the project exclusions. Adding to this total an expected forty attorney referrals and "walk-ins," an estimated 415 prisoners could be released each month with no relaxation of exclusions, as opposed to the approximately 100 prisoners presently being released. If the exclusions were read to exclude only very serious drug cases, as many as 450 people could probably be released monthly.

Although the Dallas Project was very selective in determining who it would release, its releasees were not the ones who scored the highest on the D.C. scale. Table 13 compares the scores of excluded prisoners and released prisoners. Twenty-nine prisoners scored ten points or better on the D.C. scale, however, only six of these were released by the Dallas Project. Two prisoners were released who had not scored sufficient points to be released on the D.C. scale.

TABLE 13  
Comparative Scores of Releasees  
and Excluded Prisoners on the D.C. Scale

<i>D.C. Scale</i>	<i>Excluded Prisoners</i>	<i>Recommended for Release</i>
11	12	4
10	11	2
9	14	11
8	25	6
7	34	3

<sup>81</sup> Cf. *id.* at 46.

<sup>82</sup> *Id.* at 31 (97% truthful).

6	24	2
5	16	0
4	13	0
3	12	2
2	4	0
1	6	0
0	7	0
Excludable by D.C. standards	53	0
Presumed non-recommendable by D.C. standards	12	0
Non-recommendable by D.C. standards	1	0
Unavailable for interview	90	0
TOTAL	<u>334</u>	<u>30</u>

A total of forty-seven prisoners were considered for release by the Dallas Project and rejected because of insufficient ties in the community. Similarly, eighteen prisoners were excluded because after inspection of their files or informal interviews the interviewer felt that they would not be good risks for release. The table below shows the scores of these two groups of prisoners on the D. C. scale.

TABLE 14  
Scores of "Bad Risk" Prisoners  
and Prisoners with "No Ties"  
on D.C. Scale

<i>Points</i>	<i>Number of "Bad Risk" Prisoners</i>	<i>Number of Prisoners with "No Ties"</i>
11	1	2
10	0	3
9	3	3
8	3	4
7	4	8
6	4	4
5	1	5
4	1	4
3	0	2
2	0	1
1	0	1
0	0	6
Unavailable	0	2
Excludable by D.C. standards	0	2
Presumed non-recommendable by D.C. standards	1	0
Non-recommendable	0	0
TOTAL	<u>18</u>	<u>47</u>

It is apparent from Table 14 that the subjective feeling of the interviewer was inaccurate in many cases. The primary reason for this inaccuracy is the interviewer's practice of discontinuing the interview as soon as a negative



factor appears.<sup>83</sup> Were each prisoner examined more closely, many would be found to have redeeming qualities not apparent from their files or from a truncated interview.

*Saving to the County.* It might be thought that, because such a large majority of prisoners would have gained release anyway, the saving to the county is negligible, but that is not actually the case. The Pretrial Release program released a total of 846 prisoners. Judging from the control group experience, approximately twenty percent of these prisoners would not have been released prior to trial. Therefore, the Project at the minimum released 167 prisoners who would not have otherwise been released, with a saving to the county of \$7.50 per man-day. Subtracting the nine days<sup>84</sup> on the average between arrest and release, the total saving to the county at this conservative estimate was \$137,775. This estimate is probably somewhat lower than the actual figure because by the time the prisoners are screened through the Pretrial Release program, many of them have already gotten out on bond or on straight release. Therefore, the percentage of prisoners exposed to the Project who would not have otherwise been released on bond is much higher than twenty percent. For example, twenty percent or 238 of the 1,199 prisoners in the research sample would have remained in jail until trial. If the reader will glance back at Tables 1-6, he will see that by the time the Project gets to the prisoners, 499 are already gone, so the Project actually considers only 700 of the 1,199 prisoners. This group includes the 238 who would stay in jail until trial if forced to rely on money bail. Therefore, thirty-four percent of the prisoners considered by the Project would have remained in jail until trial. Applying this figure to the 846 Project releasees, approximately 288 of the Project releasees would have remained in jail until trial, so that the saving to the county was \$237,600.

If the Project would increase its releasees to the 415 per month which the evaluators consider feasible, the yearly total would be 4,980, of whom an estimated thirty-four percent would otherwise be destined to remain in jail until trial. Therefore, the Project could save the county the cost of 1,694 prisoners for an average of 110 days, or \$1,396,725. If the Project could also reduce its average time to release from nine days to one, an additional \$101,580 would be saved, for a total saving of \$1,498,305.

## VII. RECOMENDATIONS

The goal of the Dallas Pretrial Release Project should be to increase substantially the number of prisoners released each month, while reducing the skip rate to below four percent. The evaluators believe that this goal can be achieved if the Project adopts the following recommendations.

### A. Fewer Summary Exclusions

As noted earlier, the overwhelming majority of prisoners passing through

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<sup>83</sup> Sometimes the interview will be terminated when the interviewer feels he can best use his time interviewing another defendant.

<sup>84</sup> The 9 days could be partially reduced if more efficient transfer techniques were used to bring prisoners from outlying cities to county jail, and the savings would thereby be increased.

the screening processes of the Project are excluded summarily, such exclusion being based in part on a subjective judgment by the interviewer for the Project. This is understandable because a large number of prisoners have already posted bond or committed an excludable offense and, therefore, do not warrant further consideration. However, six types of summary exclusions should be discontinued: (1) prisoner already has attorney; (2) gang offense; (3) no ties evident from file; (4) offense is "threats"; (5) number of current offenses; and (6) subjective bad risk based on file. One hundred and forty prisoners, more than ten percent of the total number of prisoners considered during the interview period, fall within these six types of summary exclusion. Elimination of these summary exclusions will provide the Project with a significantly larger number of prospects for release.<sup>65</sup>

(1) *Prisoner has attorney.* Thirty-one of the prisoners in the research sample were excluded because they already had an attorney. There may be some practical reasons why prisoners who already have attorneys are excluded from consideration by the Project. However, since the Project does not purport to represent defendants, but rather to determine whether they are good prospects for release, there is no substantive reason why this class of prisoners should be excluded from consideration.

(2) *Gang offense.* Thirty-five prisoners in the research sample were excluded because they had been involved in a gang offense. The gang offense category is extremely broad. It is possible for two or more people jointly to undertake a criminal activity without being members of what one might consider a gang. Yet the fact that more than one person is involved in the criminal activity makes the activity fall within the gang offense category. The exclusion of all prisoners involved in gang offenses is directed at the possibility of future danger rather than the likelihood that the defendant will return. This same prohibition, however, is not placed on the prisoner if he is able to post money bond. Therefore, the fact that a particular prisoner was involved in a gang offense would seem to be of small significance in determining the suitability of that prisoner for release.

(3) *No ties evident from file.* Eighteen prisoners were excluded in the research sample because the interviewer, on inspection of their files, determined that they had no ties to the community. The presence or absence of information in a prisoner's file should not, of course, be decisive, since the files are not complete. For example, the Project interviewer would occasionally note from the files that the prisoner's wife did not live with him and, thus, surmise that the prisoner had few ties to the community. The evaluators, by interviewing the same prisoner, might find that he lived with a brother or other relative, that his parents lived a few doors away, and that he had been employed steadily. None of this information would appear in the prisoner's file. Thus, absence of information does not necessarily mean that local ties do not exist.

(4) *Offense is "threats."* The Project interviewer excluded twenty-eight prisoners because they were charged with the offense of threats. The offense of threats is a rather large category and does not describe the conduct of a

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<sup>65</sup> This assumes that judges will cooperate and issue release orders when appropriate.

particular defendant. If, for example, the offense involves threats to the life or safety of witnesses or jurors, then refusal to consider such persons for release is a rational and necessary decision.<sup>86</sup> But if the threats are generalized or insignificant, they do not really reflect on the likelihood that the prisoner will return for trial, and, therefore, should not be relevant to the Pretrial Release Project determination.

(5) *Number of current offenses.* Eleven prisoners were summarily excluded from consideration by the Project because of the number of current offenses pending against them. This is another category that does not necessarily require exclusion. For example, if a defendant breaks and enters carrying a gun, damages property, and flees from the police, he could be charged with a substantial number of offenses, all of them arising out of one continuing criminal enterprise. Therefore, the fact that a prisoner is charged with more than one crime does not necessarily mean that he is involved in a variety of criminal enterprises at the same time. Furthermore, the number of current offenses may not be relevant to the question of whether he will return for trial.<sup>87</sup>

(6) *Subjective bad risk based on file.* The interviewer summarily excluded seventeen prisoners because he considered them bad risks based on inspection of their files. Criticism of this type of summary exclusion is included in the following section dealing with objective standards.

### B. Objective Standards

It has been shown that the subjective approach of the Project did not accurately locate the best prospects for release. The evaluators believe that by adopting an objective scale the Project can not only make better decisions about who should be released, but can also reduce its skip rate. The Project could adopt standards similar to the standards of the District of Columbia or Manhattan Projects. The Dallas Project might, however, choose to give more weight to the prisoner's prior records or, perhaps, to weigh its scale more heavily in favor of the employed prisoners. The important thing is that all interviewers have the same standards and that they apply these standards equally to all prisoners so that the scoring process is not reduced to a series of arbitrary choices.

The utilization of the objective point system has a major advantage over the present system because it enables the Project to use relatively untrained interviewers to collect the necessary information and score the information based on the factual material gathered. The evaluators are aware of the fact that from time to time law student volunteers have participated in the Project and may do so again. Since the Project has the potential to release far more prisoners than it is currently releasing, and this increase in the number of releasees will generate far more work, it would be best if some of this volunteer help could be more effectively used.

### C. More Extensive Interviews

A prisoner's file does not always give an accurate reflection of whether the

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<sup>86</sup> See *Carbo v. United States*, 82 S. Ct. 662 (Douglas, Circuit Justice, 1962).

<sup>87</sup> See *Stack v. Boil*, 342 U.S. 1 (1951).

prisoner lives at home, is currently employed, or has close family contacts in Dallas. A prisoner with a poor employment record may be found to have strong ties to his family and a long residence at one place in Dallas. It is the practice of the Project, when interviewing a prisoner, to discontinue the interview as soon as unfavorable data begins to appear. The evaluators recommend that the Project undertake to administer a full standard interview to all prisoners who are not already out on bond, have not committed an excludable offense, or who are not for some other valid reason summarily excludable.<sup>88</sup> While this will take additional time, it must be pointed out that the evaluation team administered a full interview to a great majority of the prisoners in this category and usually completed all interviews by the middle of the afternoon; therefore, this recommendation is not unrealistic.<sup>89</sup>

<sup>88</sup> The following form was recommended for monitoring the daily screening process:

Date \_\_\_\_\_  
 Total Screened Out \_\_\_\_\_  
     Drug Offense \_\_\_\_\_ Out Already \_\_\_\_\_  
     Robbery \_\_\_\_\_ Hold for Another Agency \_\_\_\_\_  
     Assault \_\_\_\_\_ Unavailable for Interview \_\_\_\_\_  
     Assault to Murder \_\_\_\_\_ Excluded for Other Reason, \_\_\_\_\_  
     Aggravated Assault on a \_\_\_\_\_ Specify: \_\_\_\_\_  
     Police Officer \_\_\_\_\_  
     Murder \_\_\_\_\_  
     Maiming \_\_\_\_\_

<sup>89</sup> The additional time needed to secure a defendant's release once the interview is completed must also be considered. The evaluators did not have to secure release for any defendants, therefore some additional manpower may be needed. In addition, the evaluators recommended that better records be kept on the prisoners screened by the Project. The following form was recommended to be used for those prisoners to be released.

Defendant's Full Name: \_\_\_\_\_ Date of Arrest: \_\_\_\_\_  
 Aliases or Nickname: \_\_\_\_\_  
 Home Address: \_\_\_\_\_ For \_\_\_\_\_ Years  
 Previous Address: \_\_\_\_\_ For \_\_\_\_\_ Years  
 Phone: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Race: \_\_\_\_\_ Education (yrs.): \_\_\_\_\_  
 Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Eyes: \_\_\_\_\_ Hair: \_\_\_\_\_  
 Res. Dallas Co. (yrs.) \_\_\_\_\_ If Unemployed, how long \_\_\_\_\_  
 Name of Present Employer: \_\_\_\_\_ His Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Type of Work: \_\_\_\_\_ Name Supervisor: \_\_\_\_\_  
 Employed Since: \_\_\_\_\_  
 Name of Former Employer: \_\_\_\_\_ His Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Type of Work: \_\_\_\_\_  
 Name of Supervisor: \_\_\_\_\_  
 Employed from \_\_\_\_\_ to \_\_\_\_\_ Reason for Leaving: \_\_\_\_\_  
 Marital Status (circle) S M W D Sep. ALL Minor Children (no.) \_\_\_\_\_  
 Lives With \_\_\_\_\_ Spouse: \_\_\_\_\_ Address: \_\_\_\_\_  
 Approx. TOTAL Earnings Past Twelve Months (after deductions): \$ \_\_\_\_\_  
 Pension: \_\_\_\_\_ Amount: \$ \_\_\_\_\_  
 Relative in Dallas Area: \_\_\_\_\_  
 Rarely See: \_\_\_\_\_ Telephone Occasionally: \_\_\_\_\_ Visit Personally: \_\_\_\_\_  
 Three Dallas County Residents who will always know your whereabouts:  
 1. Name \_\_\_\_\_ Address \_\_\_\_\_  
     Phone \_\_\_\_\_ Relationship \_\_\_\_\_  
 2. Name \_\_\_\_\_ Address \_\_\_\_\_  
     Phone \_\_\_\_\_ Relationship \_\_\_\_\_  
 3. Name \_\_\_\_\_ Address \_\_\_\_\_  
     Phone \_\_\_\_\_ Relationship \_\_\_\_\_  
 Employment Verification: \_\_\_\_\_ Residence Verification: \_\_\_\_\_ Reference Verification: \_\_\_\_\_  
     Employed as stated. \_\_\_\_\_ Lives where stated. \_\_\_\_\_ 1st reference rec-  
     Employer will take \_\_\_\_\_ Has relatives as \_\_\_\_\_ ommends release on per-  
     back. \_\_\_\_\_ stated. \_\_\_\_\_ sonal bond.  
 Name of person verifying: \_\_\_\_\_ Source recommends \_\_\_\_\_ 2nd reference rec-  
     \_\_\_\_\_ for personal bond. \_\_\_\_\_ ommends release on per-  
     Name of person verifying: \_\_\_\_\_ sonal bond.

### D. Verification of Interview Data

While other pretrial release projects report a very small percentage of prisoners giving incorrect information, it does occur;<sup>90</sup> the evaluators noted that some of the prisoners did not tell the truth about their previous record. Therefore, to confirm the information gathered in the interview and to gain contact with the people who will eventually be used in follow-up, verification of interview facts should be established as a part of the Project routine. In the case of the District of Columbia Project, defendants were told that the information given would be verified; and after the interviews, an attempt was made to reach the necessary parties to verify at least a percentage of the material given by the prisoners.<sup>91</sup>

The Project should also send reminder letters to those people listed as references by the prisoners. While this increased follow-up will probably make no difference for the majority of prisoners, it is necessary in order to decrease the number of bond forfeitures. It may be more effective to notify by phone, but that is a technical matter which the Project can best decide with experience.

## VIII. SUMMARY

The purpose of this Article has been to provide a full and fair examination of the operations of the Dallas Pretrial Release Program. As in every evaluation, there is a tendency to emphasize negative aspects of the program. Although the evaluators have described weaknesses in the operations of the Project and made recommendations for change, the Project has been a substantial benefit to a number of prisoners released in Dallas County and such efforts should be continued, improved, and expanded. One should remember that the Dallas Project was experimental and many problems will undoubtedly disappear in subsequent years of operation. Furthermore, pretrial release programs should be supported throughout Texas.

Prior Record:

Number\_\_\_\_ j/f\_\_\_\_ a/f\_\_\_\_ a/m\_\_\_\_  
 Subsequent Record:  
 Date of Interview\_\_\_\_\_  
 Date of Release\_\_\_\_\_  
 Subsequent Arrest and Charge\_\_\_\_\_  
 No Subsequent Arrest and Charge\_\_\_\_\_  
 Offense \_\_\_\_\_  
 Date Charged\_\_\_\_\_

Prior Convictions:

Number\_\_\_\_ j/f\_\_\_\_ a/f\_\_\_\_ a/m\_\_\_\_  
 Crime against pers.\_\_\_\_ Narc.\_\_\_\_ same\_\_\_\_  
 Most recent, date\_\_\_\_\_  
 On Bond\_\_\_\_ Facing revocation of felony  
 probation or parole\_\_\_\_ Prior revocation of  
 parole\_\_\_\_ Willful no show\_\_\_\_ Other record  
 of escape or fugitive\_\_\_\_\_  
 Court\_\_\_\_ Attorney\_\_\_\_\_  
 Court Settings\_\_\_\_\_

\_\_\_\_ 3rd reference rec-  
ommends release on per-  
sonal bond.

<sup>90</sup> See note 82 *supra*, and accompanying text.

<sup>91</sup> D.C. *Bail Study* 24.

The following facts should be verified for each prisoner:

- (a) Whether the prisoner is currently employed.
- (b) Whether the employer will take back the prisoner.
- (c) Whether the prisoner lives at the address given.
- (d) Whether the references given by the prisoner are willing to vouch for his reliability.